

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 668 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMESH STEEL

Versus

PRAKASH INDUSTRIES

Appearance:

MR MD PANDYA for Petitioners
MR SD PATEL for Respondent No. 1
SERVED for Respondent No. 2
SERVED BY DS for Respondent No. 4

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 12/03/96

ORAL JUDGEMENT

1. This Civil Revision Application is directed against the judgment and order passed by learned City Civil Judge in Summary Suit No. 4564 of 1986 below Exhibit 90 whereby he has rejected the application for amendment of plaint tendered by the plaintiffs so as to amend the cause title of the plaint.

2. The suit was filed by the petitioners plaintiffs against the defendants for recovery of the amount of Rs. 51,457/- being the principal sum with interest thereon. In the plaint it inter alia stated that the plaintiff was M/s Ramesh Steel through the proprietor Laxmiben Bhuderbhai the suit was filed. The verification in the plaint as well as vakalatnama were signed for and on behalf of the trust by the trustees. However, one of the trustees namely, Bhuderbhai Dwarkadas Patel was not impleaded as plaintiff in the cause title of the plaint.

3. In the written statement which was filed by the defendants in the year 1986 itself it was pointed out that suit by one of the trustees was not maintainable and that the suit was therefore for nonjoinder of the parties.

4. It appears that thereafter Laxmiben Bhuderbhai expired on 13th February, 1993 and an application was given for amendment of the palint to amend the cause title of the plaint on 2nd of February, 1995. By the proposed amendment what is sought to be done is that one of the other co-trustees, namely Bhuderbhai Dwarkadas Patel who was not shown as party plaintiff to the suit, was sought to be introduced as party plaintiff. Such amendment was opposed by the respondent defendants and the trial court has by the impugned judgment and order rejected such application for amendment merely relying upon the decision of the Full Bench of this Court reported in 1977 SC 680 and 1957 SC 363. The reasonings of the trial court proceeds on the basis that since a suit on and behalf of the trust is required to be filed by all co-trustees, if suit is filed by one of the trustees, such suit is not maintainable and an attempt to amend the plaint by amending the cause title would amount to permitting the plaintiff to remove the defect which was in the suit very inception. Over and above the aforesaid reasoning, the trial court has also dwelt upon the decision of the Full Bench of this Court in the case of ATMARAM RANCHHODBHAI v. GULAMHUSEIN GULAM MOHIYADDIN, reported in 13 GLR 828 more particularly the second proposition laid down by the said decision.

3. In my opinion, if reference is made to the provision of the Order 6 Rule 17 of the Code of Civil Procedure and more particulary to the decision of the Supreme Court in the case of JAI JAI RAM MANOHARLAL v. NATIONAL BUILDING MATERIAL SUPPLY, GURGAON, reported in AIR 1969 SC 1267 to which unfortunately the attention of

the trial court was not invited. Specifically, the law is well settled that all amendments in the pleadings are required to be allowed at any stage of the suit provided such amendment is necessary for the purpose of determining the real question in controversy between the parties. The real question in controversy in the present suit is as to whether the defendants are liable to pay the amount claimed by the petitioner trust from the defendants towards certain transaction. If the plaintiff trust through its trustees is not in a position to establish its claim and mere nonjoinder of one of the trustees should not result into rendering the suit non-maintainable and the proposition of law which is laid down in 13 GLR cannot necessarily be extended to any suit by a public trust where all trustees must join especially when the suit is filed for the purpose of recovering dues of the trusts. About amendment which is sought to be made by the petitioner plaintiff, there is some justification in the grievance made by the defendants that in a suit of 1986 the amendment is moved in the year 1995. However, delay in making amendment in the pleading cannot be a sole ground of rejecting an application for amendment if it has not caused any prejudice to the defendants. The Apex court has even at the stage of proceedings pending before the Apex Court permitted the amendment of the pleadings and has found that delay as such cannot be a ground for refusing amendment. In view of the aforesaid settled legal position and more particularly the decision of the Supreme Court referred to hereinabove and in the case of L.J. LEACH AND CO. v. MESSRS JARDINI SKINNER AND CO. reported in AIR 1957 SC 357, I do not think that the trial court was justified in rejecting the application filed by the petitioners plaintiffs. The amendment was required to be granted and is hereby granted. However, since the amendment is sought at a very late stage, the petitioners can be put to some reasonable terms and therefore amendment is granted subject to the condition on petitioners plaintiffs paying the cost of Rs. 1500/- in one set only to all the defendants. Amendment to be carried out in the plaint after the receipt of the writ within four weeks and the cost is quantified hereinabove to be paid before the amendment is carried out. Rule is made absolute accordingly with cost as quantified as above.
